

ST 00-0283-GIL 12/11/2000 GROSS RECEIPTS

A caterer's charges for wait staff, equipment rental, linen and delivery are to be included in his gross receipts and are fully taxable. These are costs of doing business, which are never deductible from gross receipts when calculating Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.410. (This is a GIL).

December 11, 2000

Dear Xxxxx:

This letter is in response to your letter dated October 23, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Please review a number of issues and concerns regarding certain charges that we include to our customers, that have been challenged by a customer and her legal

Part of our operations as a banquet facility, include charging our customers a ceremony

Illinois Department of Revenue field and audit staff that any product or service that we sell to a customer, and is an income to us, is taxable by the state. Therefore we have in

We would appreciate if you could clarify the sales tax charge on these issues:

Ceremony Fee -
(Optional)

ceremony to be held on our premises. Sometimes the

or in the event of inclement weather, the ceremony is held indoors in the banquet facility itself. The fee covers the upkeep of the provided, the set up of chairs and decorations, and the use of the space.

this is a per table charge to provide the use of the table and chair linens, which we own. The fee also covers the set up

Service Charges - this is a percentage fee charged on all food, beverage, set-ups

To recap, currently we are charging sales tax on all these items. This is what we believed to be required by law. If this is not the case, we will abide by your instructions, to provide appropriate charges to our clients.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of business.

Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. See the enclosed copy of 86 Ill. Adm. Code 130.2145. Such persons specifically include caterers.

Section 1 of the Retailers' Occupation Tax defines the term, "selling price," which is the base of the tax. It states that "selling price" includes "the consideration for a sale valued in money ... and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See 35 ILCS 120/1. As indicated by this definition, a retailer's costs of doing business are not deductible from his gross receipts. This principle is articulated in Section 130.410 of the Department's regulations governing "Costs of Doing Business Not Deductible" (see enclosed copy). The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs ... or any other expenses whatsoever" are not deductible from gross receipts.

As a result, charges for wait staff, equipment rental, linen and delivery are to be included in a caterer's gross receipts and are fully taxable. These are simply costs of doing business, which are never deductible from gross receipts. It is immaterial that the customer is separately billed for the price of these items. Again, they are simply costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

The proceeds of mandatory service charges separately stated on customers' bills for the purchase and consumption of food and beverages purchased at retail from a retailer are exempt from tax to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed. This procedure is required by 35 ILCS 120/2-5(15) (1998 State Bar Edition). Specifically, Section 130.2145(d) states as follows:

"Mandatory gratuities are not included in the taxable receipts of persons operating restaurants, hotels and other places of business which come within the Act, if such mandatory gratuity is added to banquet or dinner checks in the form of a percentage of the total bill, or as a flat rate, to the extent that *the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed.* (Section 2-5(15) of the Act) If any part of the service charges are used to fund or pay wages, labor costs, employee benefits or employer costs of doing business, that part of the service charge is includable in gross receipts.

Therefore if the employer separately states the mandatory gratuity charge, and if the entire gratuity is distributed to the servers or other employees who participated directly in serving, preparing, hosting, or cleaning up the food or beverage function with respect to which the mandatory gratuity is

charged, the gratuity is not subject to Retailers' Occupation Tax. However, if the employer retains and uses the entire mandatory service charge for any other use, including paying employee wages, the mandatory gratuity/service charge is subject to tax.

In respect to charges for use of a facility, Section 130.2145(c)(1) states as follows:

“A) Cover charges are not included in the taxable receipts of persons operating restaurants, hotels and other places of business which come within the Act, where such cover charges are made exclusively for the privilege of occupying space within such eating place, and where the payment of a cover charge by a patron does not entitle such patron to use or consume any food or beverage or other tangible personal property.

B) In such an instance, the cover charge is a receipt on account of a service rendered, whether such service be entertainment or otherwise, and does not accrue on account of the sale of tangible personal property at retail.

If the ceremony fee you charge is merely for the use of the facility (i.e., for the privilege of occupying space), then it is not subject to tax. If, however, the ceremony fee is meant as reimbursement for items that normally would be included in the provider's overhead, then it is to be included in the taxable gross receipts.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.